

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Federal-State Joint Board on Universal Service)	
)	
TRACFONE WIRELESS, INC.)	CC Docket No. 96-45
)	
Petition for Designation as an Eligible)	
Telecommunications Carrier)	
in the Commonwealth of Pennsylvania)	

Ex parte communication pursuant to Section 1.1206 of the Rules.

COMMENTS OF NENA

With the captioned petition for ETC status in Pennsylvania,¹ TracFone has now applied for such designations in 10 states and the District of Columbia. To our knowledge, none of its applications has been granted. We are moved to comment now by the emergence of frustrating patterns of behavior by TracFone related to whether or how to apply surcharges for support of 9-1-1 and enhanced 9-1-1 calling, which are commonplace for conventional wire and wireless telephony.

NENA's only other comments about TracFone in this docket concerned the prepaid provider's plan for compliance with the FCC's Forbearance Order² conditionally relieving TracFone of the facilities requirement at

¹ Dated December 11, 2007, comments sought by Public Notice, January 8, 2008, DA 08-57. Although these comments focus on Pennsylvania, we ask that they be considered, if applicable, in the other pending ETC applications dating from as early as 2004.

² FCC 05-165, released September 8, 2005; Public Notice, DA 05-2946, released November 8, 2005.

Section 214(e) of the Communications Act. The Forbearance Order was conditioned (at ¶6) on “TracFone (a) providing its Lifeline customers with 911 and enhanced 911 (E911) access regardless of activation status and availability of prepaid minutes . . .”

The ability of Public Safety Answering Points (“PSAPs”) to equip themselves for enhanced emergency call reception depends, in many states, on the collection from wire and wireless telephone customers of surcharges aimed at extending and maintaining such enhancements.³ This dependence on wireless fees continues to grow as consumers abandon traditional wireline service in favor of wireless. Moreover, as many customers increasingly turn to prepaid wireless, the 9-1-1 system will require their support, just as it has depended on post-paid wireless and wireline 9-1-1 fees in the past.

TracFone has participated in a number of state proceedings considering whether or how to impose surcharges on prepaid cellular telephone service. To the increasing frustration of NENA and several of its state chapters and involved members, TracFone’s apparent practice has been to offer to cooperate with 9-1-1 entities in the search for a fair and practicable way to surcharge prepaid services, only to turn against, and sometimes formally challenge, the legislative result. In other cases, where a surcharge

³ Joint Resolution of NENA and APCO, March, 2007, [http://www.nena.org/UserFiles/File/Prepaid%20Wireless%209-1-1%20Fees%20Resolution%20-%20final\(1\).pdf](http://www.nena.org/UserFiles/File/Prepaid%20Wireless%209-1-1%20Fees%20Resolution%20-%20final(1).pdf)

law already exists and purports to apply to prepaid services, TracFone may pay initially and then suspend remittances later.⁴

NENA does not question TracFone's right to resist state laws whose language, often pre-dating the widespread availability of prepaid service, may not satisfactorily cover this type of provider-customer relationship. Indeed NENA has been working, and continues, to work, with our members and representatives of the wireless industry to address this issue. We must object, however, to TracFone's seeming initial acceptance of a surcharge mechanism that applies to providers of prepaid customers, only later to refuse to pay on the policy ground that the appropriate means of collecting the surcharges should be at point of sale. In TracFone's view, the burden then falls appropriately on the end user of the prepaid service, not the provider.

The joint comments submitted by the Pennsylvania Office of Consumer Advocate and the National Emergency Number Association, Keystone Chapter⁵ illustrate some of the features of TracFone behavior that has so frustrated NENA and its members. It is our understanding that in Pennsylvania, as in several other states, initially TracFone paid under existing Pennsylvania legislation, then refused to continue payments on the

⁴ NENA conducted an informal survey of members familiar with state legislative proceedings involving prepaid wireless surcharges. The results are available should the FCC wish to see them. NENA has asked a second staff member to verify the survey outcomes and will revise as necessary within the week.

⁵ Dated February 8, 2008.

basis of its preference that surcharges be collected from end users at some point of sale.

This is part of a pattern of refusing to pay fees until a multi-year study is conducted to determine the best way to collect on prepaid service (despite the fact that such studies have already been conducted in other states) or outright refusal to pay fees that were previously being paid unless the state changes its collection model to that advocated by TracFone. Indeed NENA representatives have been told directly by TracFone that they will no longer be paying any 9-1-1 fees unless they are collected by the retail seller of prepaid minutes. TracFone is free to advocate for the position it wishes, but it should not refuse to comply with statutory obligations until that position is adopted by the legislature.

Lest it be thought that TracFone's behavior in the states is no business of the FCC, NENA begs to differ. First, the significant grant of conditional forbearance by which TracFone – if ever granted ETC status –is permitted to receive USF funding even though it owns no telecommunications facilities, is based on a compliance plan in which TracFone promises to support access to 9-1-1 and enhanced 9-1-1. TracFone contravenes the spirit, if not the letter, of that grant when it engages in the kind of behavior described above. In TracFone's case, the forbearance from the facilities requirement for USF participation makes the grant more a privilege than an entitlement.

Promising 9-1-1 support at the federal level while withholding fees to support the system in the states is, we submit, not in the public interest.

Second, the situation here is parallel in some respects to one the FCC dealt with in permitting VOIP providers to secure “pseudo-ANIs” for the routing of emergency telephone calls. The Commission ordered the temporary administrator of the program, NeuStar, as follows:

Furthermore, NeuStar may assign p-ANI to VOIP service providers that can provide such evidence of carrier status as well as to carriers that provide wholesale 911-related services to VOIP service providers. Requests for waivers of the requirement may be filed any entity that certifies that it fully remits 911 emergency service fees into all state and local 911 funds, and fully contributes into universal service mechanisms.⁶

The Commission’s decision to condition eligibility of non-carrier providers for p-ANI assignments on the basis of compliance with local and state 9-1-1 funding obligations should, we submit, be applied to the Pennsylvania and other pending ETC applications of TracFone.

Conclusion. NENA agrees with the Pennsylvania Office of Consumer Advocate and the National Emergency Number Association, Keystone Chapter that designation of TracFone as an ETC to offer Lifeline “is not in the public interest unless it is conditioned on a positive commitment by TracFone to satisfy its state statutory obligation to collect and remit 9-1-1 recovery fees.”⁷ Thus, for the reasons stated above, NENA asks that any grant of ETC status to TracFone in Pennsylvania or in other states where it

⁶ Letter from Thomas J. Navin to the Chair of the North American Numbering Council and NeuStar, September 8, 2006. (emphasis added)

⁷ Comments, at 8.

has applied, or will apply, be conditioned on its compliance with all lawful requests by states or local governing authorities to remit surcharges in aid of 9-1-1 emergency calling.

Respectfully submitted,

NENA

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Certificate of Service

The foregoing "Comments of NENA" have been served today by electronic mail upon:

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